

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY BUFORD,)	No. CV-F-02-6187 OWW/DLB P
)	
)	ORDER DENYING PLAINTIFF'S
Plaintiff,)	MOTION FOR RECONSIDERATION
)	(Doc. 80)
vs.)	
)	
PAROLE AGENT MOUNTS, et al.,)	
)	
Defendant.)	
)	
)	

Plaintiff, a state prisoner proceeding *in pro per*, moves for reconsideration of the Order filed on April 27, 2007 dismissing Plaintiff's complaint, revoking his *in forma pauperis* status, and directing Plaintiff to pay the \$150.00 filing fee.

Plaintiff's motion for reconsideration is DENIED.

Plaintiff argues that the civil action filed in this court, *Buford v. Fresno County Jail*, No. CV-F-00-5542, should not count as the third "strike" pursuant to 28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the

1 prisoner has, on 3 or more prior occasions,
2 while incarcerated or detained in any
3 facility, brought an action or appeal in a
4 court of the United States that was dismissed
5 on the grounds that it is frivolous,
malicious, or fails to state a claim upon
which relief may be granted, unless the
prisoner is under imminent danger of serious
physical injury.

6 The Complaint in *Buford v. Fresno County Jail* was filed on
7 April 6, 2000. Plaintiff's address was listed as the Solano
8 County Jail, Fairfield California. Plaintiff contends, however,
9 that he was released from the Fresno County Jail on April 3, 2000
10 and was re-arrested and re-booked into the Fresno County Jail on
11 April 4, 2000. In his Objections to the Findings and
12 Recommendation, Plaintiff asserted that "[t]he case, Buford v.
13 Fresno County Jail was given to Plaintiff's jail officials at or
14 briefly bore April 3, 2000 "release date." Plaintiff argues:

15 These facts substantiate and differentiate
16 the attributing factors ill-holding the
17 Plaintiff to an invalid 'third-strike' simply
18 because during the mailing and actual filing
19 of the Buford vs. Fresno County Jail,
20 complaint Plaintiff was 'released' from
21 custody and re-arrested between April 3 and
22 April 4, 2000... As such, continuous custody
23 is not the applicable standard to which this
24 issue should be resolved and that the actual
filing time, mailing time and receiving time
25 of the complaint by the Court literally and
26 in the culmination of facts that avoid 'third
strike applicability' to the Plaintiff which
only exist because the defendants contend
that 'the plaintiff "was incarcerated" during
the filing of the Buford v. Fresno County
Jail complaint.

Plaintiff's statement of grounds for reconsideration as well
as the docket in No. CV-F-00-5542, demonstrate that he was

1 incarcerated when he filed the Complaint in *Buford v. Fresno*
2 *County Jail*, No. CV-F-00-5542. That Plaintiff presents documents
3 from which it might be inferred that he was briefly released from
4 the custody of the Fresno County Jail sometime during the evening
5 of April 3, 2000 until sometime during April 4, 2000 does not
6 negate the fact of incarceration at the time the action was
7 commenced.

8 CONCLUSION

9 For the reasons stated above, Plaintiff's motion for
10 reconsideration is DENIED.

11 IT IS SO ORDERED.

12 Dated: May 30, 2007

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE